IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN AT JODHPUR

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O R D E R

Smt. Daya Saxena vs. State of Raj. Anr.

S.B. CIVIL WRIT PETITION NO.2923/1993 UNDER ARTICLE 226 OF THE CONSTITUTION OF INDIA.

DATE OF ORDER : 28th July, 2006

PRESENT

HON'BLE MR.MOHAMMAD RAFIQ,J.

Mr.Harish Purohit, Advocate for Mr. Sanjay Mathur, Advocate, for the petitioner.
Mr.Rameshwar Dave, Dy. Government Advocate for the respondents.

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BY THE COURT: -

The petitioner in this writ petition has challenged validity of Para A of Schedule II appended to the Rajasthan Civil Services (Special Selection and Special Conditions of Services of Project Directors, Project Officers and Other

Officers in the Women's Development Project) Rules, 1984 (in short the rules of 1984) and has also challenged the order dated 17.2.193 passed by the Addl. Director, Women and Chief Development Department, Jaipur.

Brief facts giving rise to the present writ petition are that the Director, Women's and Child Development Department, Rajasthan, Jaipur issued an advertisement on 9th Sept., 1991 inviting applications from the eligible candidates for appointment on deputation basis on the post of Project Director in the pay scale of Rs.3700-125-4700-150-5000 for a period of one year. Applications were invited from only women candidates working with the Government Departments/Organizations, who were drawing salary in the minimum pay scale of Rs.2540/- onwards. In clause no.7 of conditions of appointment mentioned in advertisement, it was clarified that other conditions shall be applicable as mentioned in the Rules of 1984 and revised Rules of 1989. The Dy. Director, Women and Chief Development Department, Govt. of Rajasthan, Jaipur vide his order dated 28th April, 1992 appointed as many as 12 candidates

to the post of Project Director and name of the petitioner appeared at S.No.11. The petitioner was however not fixed in the pay scale of Rs.3700-5000. She submitted representation to the Director, Women and Chief Development Department on 16.5.1992. In the meantime, her place of posting was changed from Banswara to Rajsamand vie order dated 1st July, 1992 where she joined. The Addl. Director, Women and Chief Development Department, Jaipur by his order dated 17.2.1993, which is the order impugned in the present writ petition instead of fixing her pay in the aforementioned scale, sanctioned to her a sum of Rs.150/- as special pay with effect from her date of joining i.e., 17th August, 1992. The petitioner challenged this order on the ground of discrimination.

Shri Harish Purohit, learned counsel for the petitioner in assailing the aforesaid order dated 17.2.1993 and validity of para A of Schedule II appended to the Rules of 1984 has argued that action of the respondents was discriminatory because one Miss Sunita Acharya holding the post of Animator with consolidated monthly salary of

Rs.1350/- was not even entitled to hold such post under the Rules, yet she has been paid in the scale of Rs.3700-5000. Similar were the cases of Mrs. Kamlesh Yadav, Rajiya Zabin, Indu Chopra, Vijay Laxmi Joshi and Sushila Bohra, who have been all fixed in the scale of Rs.3700-5000 even though they were also not eligible for the same. Learned counsel for the petitioner has also cited example of one Smt. Majari Bharti and Dr. (Miss) Preetam Pal Kaur. It has also been argued that when all the incumbents working on the post of Project Director and discharging similar nature of duties, payment of their salary in different pay scale would be discriminatory inasmuch as the petitioner is entitled to receive the same salary on the principle of equal pay or equal work.

Learned counsel for the petitioner has argued that Para A of the Schedule II of the Rules of 1984 germinates discrimination among similarly situated persons. The officers of the State services are entitled to fixation in the pay scale of Rs.3700-5000 and the same pay scale has been allowed to the persons coming from autonomous bodies, persons having UGC pay scales Teachers of

the Universities and other Educational Institutions drawing pay in UGC pay scale, but only special pay of Rs.150/- has been allowed to the petitioner. It has therefore been argued that the writ filed by the petitioner deserves to be allowed.

On the other hand, Shri Rameshwar Dave, learned Dy. Government Advocate for the respondents argued that the petitioner knowing it very well that she was not eligible for appointment on the post of Project Director, submitted application pursuant to the advertisement dated 9th Sept., 1991. In this advertisement it was very categorically mentioned that only such candidates, who were drawing salary at the minimum of Rs.2540/- per month could apply. He argued that once when the petitioner was not eligible, her case was liable to be governed by clause no.7 of the advertisement, which lays down that other conditions contained in Rules of 1984 as revised in the year 1989 would apply. Para A of Schedule II of Rule 1984 provides that for State Service Officers drawing pay in the Govt. Pay Scales/UGC Pay Scales,

Officers of State Autonomous Bodies drawing pay in the pay scales on State pattern, Teachers of Universities established by law in India/Grant-in-aid Educational Institutions drawing pay in UGC pay scales and other eligible persons mentioned in Schedule-I, scale of pay on appointment to the post of Project Director shall be fixed in the scale of 2750-5000 at the stage equal to the pay notionally arrived at by increasing the actual pay drawn by him/her in the existing post (in substantive or officiating capacity) by Rs.200/- and in case there is no such equal stage then on the next higher stage. The next increment shall accrue after completion of full incremental period counting under rule 31 of the Rajasthan Service Rules, 1951. In the case of the petitioner, it has been argued that proviso (i) of Para A would apply which provided that in the case of officers of service who are not eligible for fixation of pay in the rule of pay mentioned above may be granted a special pay of Rs.150/- per month. Since the petitioner was not drawing salary of minimum of Rs.2540/- per month, but in fact was drawing only a sum of Rs.2180/- in the pay scale of Rs.2000-3200, her case is liable to be governed

by proviso (ii) to para A of the Rules of 1984. It has been argued that when once the petitioner applied knowing it fully well that her case is liable to be governed by the rules of 1984 as revised by the rules of 1989, she was estopped from challenging the same. As regards allegation of discrimination, learned counsel for the respondent has invited my attention to page no.10 of the reply in which this allegation has categorically been denied in the terms that respondents have never issued the pay fixation order of Smt. Sunita Acharay, Smt. Kamlesh yadav, Smt. Rajiya Tabeen, Smt. Indu Chopra, Smt. Vijaya Laxmi Joshi, Smt. Preetampal etc. in the pay scale of Rs.3700-5000. It has been stated that these officers being the Head of Offices and Drawing and Disbursing Officers have started drawing their salaries in the said pay scale on their own without getting their pay fixed by the competent authority and for this financial irregularity separate action is being initiated against them. As regards, Smt. Manjari Bharti and Smt. Anita, it was submitted that their pay scales have been fixed as per the rules. It has further been stated that if somebody has committed financial

irregularity that does not give the right to the petitioner to claim higher salary which she is not entitled to.

I have considered arguments of learned counsel for the parties and perused the records.

Since the petitioner has applied for appointment on deputation basis in pursuance to the advertisement (Annex.3) without there being any compulsion for her, it should be assumed that she had accepted the terms and conditions mentioned in the advertisement. In the advertisement it was categorically stated that those who are getting the salary of an amount of less than Rs.2540/- would not be eligible to apply for appointment on deputation against the post of Project Director and that the conditions as contained in the Rules of 1984 as amended by the Rules of 1989 shall be applied to their case. Having known about this fact, when the petitioner applied for the post of Project Director on deputation basis only for a period of one year and joined in pursuance thereto, she would be estopped from challenging either the terms of the

advertisement or the conditions of such advertisement including the rules. I do not find any substance in the arguments of learned counsel for the petitioner that she was discriminated against because if certain officers being drawing and disbursing officers have started drawing their salary in the said scale on their own without getting their pay fixed by the competent authority. This was a case of financial irregularity and for this separate action was initiated against them by the respondents.

For the aforesaid reasons, I do not find any merit in the present writ petition and the same is hereby dismissed.

(MOHAMMAD RAFIQ), J.

c.p.goyal/-